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09/264,065	03/08/1999	JOEL D. PESHKIN	20944.2200	2575
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FARJAMI & FARJAMI LLP 26522 LA ALAMEDA AVENUE, SUITE 360 MISSION VIEJO, CA 92691			BURD, KEVIN MICHAEL	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/264,065  
Filing Date: March 08, 1999  
Appellant(s): PESHKIN ET AL.

**MAILED**

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**GROUP 2800**

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Farshad Farjami  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 8/24/2005 appealing from the Office action mailed 5/3/2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

## **(6) Grounds of Rejection to be Reviewed on Appeal**

### **WITHDRAWN REJECTIONS**

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. Claim 55 rejected under 35 U.S.C. 103(a) as being unpatentable over Lumpkin et al (US 5,943,505) in view of Noyes (US 4,656,318). After review of Appellant's argument of claim 55, the examiner finds the argument persuasive and withdraws the rejection of claim 55.

## **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

## **(8) Evidence Relied Upon**

5,943,505	LUMPKIN et al	8-1999
4,656,318	NOYES	4-1987
5,001,703	JOHNSON et al	5-1991

## **(9) Grounds of Rejection**

The following grounds of rejection are applicable to the appealed claims:

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 4-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumpkin et al (US 5,943,505) in view of Noyes (US 4,656,318).

Regarding claim 1 and 4, Lumpkin discloses using data communication devices (DCDs) such as modems (column 1, lines 18-28). These modems comprise physical channels that are further comprised of logical channels (column 7, line 48 to column 8, line 16). The first logical channel transmits only command information such as ACKs. Other logical channels will transmit the data that is available (column 12, line 58 to column 13, line 19). The logical channels are initialized and the appropriate data or commands are sent on the logical channel (column 13, lines 20-44). Types of commands are interrupts or acknowledgments and a type of data is information. The communication will be interrupted when data is available (column 13, lines 37-39). Lumpkin discloses for transfer of data from the DTE 200 through the data communications device 201 and to the network 104 (column 7, lines 49-51), commands are generated such as acknowledgements and interrupts to allow data transmission to the network to commence (column 7, line 65 to column 8, line 16). That data will be transferred through registers and then will be transmitted over the network (column 8, lines 10-16). Therefore, the command information controls the data transmitted or received over the telephone lines connecting the modem and the network. This is the

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"controlling telephone line operations of the modem" or the data pump. Lumpkin does not disclose the command information includes commands to call a telephone number or a command to answer an incoming call. Noyes discloses a modem transmits data or command information (column 6, lines 7-11). When transmitting command information, the modem responds to a set of "intelligent modem" commands which includes commands to answer an incoming call, to dial an outgoing call or to terminate a phone line connection (column 6, lines 27-32). These commands are necessary to establish communication or to terminate communication with other terminals. It would have been obvious for one of ordinary skill in the art at the time of the invention to utilize the commands of Noyes to establish or terminate a connection between modems in the system disclosed by Lumpkin. The ability to detect an incoming call is a vital link in providing electronic mail and remote database accessing functions (column 1, lines 21-28).

Regarding claims 5-9, 14 and 15, requests are made to request specific blocks of memory and then the modem is configured specifying the number of bytes of data and the specific logical channel for transmission (column 7, lines 54-65).

Regarding claims 10-13 and 17-19, the modem is shown in figure 2, element 201.

Regarding claim 16, figure 2 shows a down stream element coupled to the modem.

Regarding claims 20, 31, 42 and 53, Lumpkin discloses using data communication devices (DCDs) such as modems (column 1, lines 18-28). These

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modems comprise physical channels that are further comprised of logical channels (column 7, line 48 to column 8, line 16). The first logical channel transmits only command information such as ACKs. Other logical channels will transmit the data that is available (column 12, line 58 to column 13, line 19). The logical channels are initialized and the appropriate data or commands are sent on the logical channel (column 13, lines 20-44). Types of commands are interrupts or acknowledgments and a type of data is information. The communication will be interrupted when data is available (column 13, lines 37-39). The modem is shown in figure 2, element 201. The interface is capable of determining what type of information is being received so that information can be routed to the appropriate location. Lumpkin discloses for transfer of data from the DTE 200 through the data communications device 201 and to the network 104 (column 7, lines 49-51), commands are generated such as acknowledgements and interrupts to allow data transmission to the network to commence (column 7, line 65 to column 8, line 16). That data will be transferred through registers then will be transmitted over the network (column 8, lines 10-16). Therefore, the command information controls the data transmitted or received over the telephone lines connecting the modem and the network. This is the "controlling telephone line operations of the modem" or the data pump. Lumpkin does not disclose the command information includes commands to call a telephone number or a command to answer an incoming call. Noyes discloses a modem transmits data or command information (column 6, lines 7-11). When transmitting command information, the modem responds to a set of "intelligent modem" commands which includes commands to answer an incoming call, to dial an outgoing

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call or to terminate a phone line connection (column 6, lines 27-32). These commands are necessary to establish communication or to terminate communication with other terminals. It would have been obvious for one of ordinary skill in the art at the time of the invention to utilize the commands of Noyes to establish or terminate a connection between modems in the system disclosed by Lumpkin. The ability to detect an incoming call is a vital link in providing electronic mail and remote database accessing functions (column 1, lines 21-28).

Regarding claims 21-27, 29, 30, 32-38, 40, 41, 43-49, 51 and 52, the data will be received and stored in the interface (figure 2).

Regarding claims 28, 39 and 50, in a personal computer (DTE, column 1, lines 18-28), numerous bi-directional data lines, address lines, control lines and status lines are present which allows for fast data transfer when needed or requested. These lines are shown in figure 2.

4. Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lumpkin et al (US 5,943,505) in view of Noyes (US 4,656,318) further in view of Johnson et al (US 5,001,703).

Regarding claim 54, the combination of Lumpkin and Noyes discloses the communication method describe above in paragraph 3. Lumpkin does not disclose monitoring the data information for embedded command information and executing the embedded commands. However, Johnson discloses, in figure 5a, transmitting command information or control bits in the same logical channel as data information



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(column 4, line 61 to column 5, line). It would have been obvious for one of ordinary skill in the art at the time of the invention to utilize the command and data information in one logical channel as shown by Johnson in the method of the combination of Lumpkin and Noyes. Johnson shows the logical channel transmitting both command and data allows adaptive control of the communication since the commands can switch slot allocation according to channel capacity (column 5, lines 1-5). This will conserve spectrum and efficiency (abstract).

#### **(10) Response to Argument**

A. Claims 1 and 4-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumpkin et al (US 5,943,505) in view of Noyes (US 4,656,318).

Claim 1- Appellant submits, on page 13 of the appeal brief, "Lumpkin fails to disclose, teach or suggest executing said command information for controlling telephone line operations of said modem wherein said command information for controlling telephone line operations of said modem includes a command to call a telephone number or a command to answer an incoming call." However, the combination of Lumpkin and Noyes is used to reject claim 1. As stated in the previous office action, the combination discloses all the claimed limitations. Lumpkin discloses the DCD, shown in figure 2, item 201, is a modem (column 1, lines 18-23). The modem 201 comprises physical channels that comprise logical channels (column 12, lines 53-

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58). A logical channel transmits data (column 7, lines 56-65) and a logical channel transmits commands (column 7, lines 56-65). The commands control telephone line operations (column 7, line 49 to column 8, line 16). As stated in the previous office action, Lumpkin discloses transferring data from the DTE 200 through the data communications device 201 to the network 104 (column 7, lines 49-51). Commands are generated such as acknowledgements and interrupts, as well as read and write commands (column 7, lines 49-56), to allow data transmission to the network to commence (column 7, line 65 to column 8, line 16). Therefore, the command information controls the data transmitted or received over the telephone lines connecting the modem and the network. This is the "controlling telephone line operations of the modem." Data is transmitted between the source 200 (also referred to as the host, a person computer and the DTE) and the modem 201 (column 5, lines 6-10 and column 15, lines 64-68) via the interface connection 204. Lumpkin does not disclose the command information includes commands to call a telephone number or a command to answer an incoming call. Noyes discloses a modem transmits data or command information (column 6, lines 7-11). When transmitting command information, the modem responds to a set of "intelligent modem" commands which includes commands to answer an incoming call, to dial an outgoing call or to terminate a phone line connection (column 6, lines 27-32). These commands are necessary to establish communication or to terminate communication with other terminals. It would have been obvious for one of ordinary skill in the art at the time of the invention to utilize the commands of Noyes to establish or terminate a connection between modems in the

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system disclosed by Lumpkin. The ability to detect an incoming call is a vital link in providing electronic mail and remote database accessing functions (column 1, lines 21-28). The combination would transmit the commands to answer an incoming call, to dial an outgoing call or to terminate a phone line connection over the command channel because that is the channel which commands are transmitted. In addition, these commands allow data transmission to the network to commence, which is the function of the commands of Lumpkin. Although Lumpkin does not teach all of the claimed limitations of claim 1, the combination of Lumpkin and Noyes disclose all of the claimed limitations.

Appellant submits, on page 13 of the appeal brief, "Lumpkin fails to disclose, teach or suggest at any place that any of the commands mentioned therein is for any purpose other than controlling the DMA interface." Appellant also states "there is not mention in Lumpkin that the command information is used by the modem for controlling the telephone line operations of the modem." The examiner disagrees that Lumpkin does not teach transmitting command information for controlling the telephone line operations of the modem. As stated in the previous office action, Lumpkin discloses transferring data from the DTE 200 through the data communications device 201 and to the network 104 (column 7, lines 49-51). The DTE 200 is a person computer (the source) (column 1, lines 18-21). The processor 210 of the modem 201 will receive a command word from the register located in the DTE 200 (column 7, lines 54-56). According to that command, information is requested from the memory 211 and will

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configure the DMA controller 240 for the upcoming data transfer (column 7, lines 56-60). That information from memory 211 is transmitted (transferred) over the communication channel 106 (column 5, lines 46-49). Therefore, the commands transmitted, from the source 200 to the modem 201, control the data transmitted and received over the communication channel of the network 104. Column 1, lines 24-29 state the communication channels are telephone lines. Since, the command information controls the data transmitted or received over the telephone lines connecting the modem and the network, the command information is used for "controlling telephone line operations of the modem."

Appellant states on page 13 of the appeal brief, "Appellant does not claim that a command to call a telephone number or a command to answer an incoming call is a new modem command." The Examiner agrees with this statement.

Appellant states on page 15 of the appeal brief, "there is no teaching or suggestion in Lumpkin to divide the data information channel of the DMA into modem data information and modem command information, let alone any such teaching or suggestion by Noyes".

First, the limitation of dividing the data information channel into modem data information and modem command information is not recited in claim 1.

Second, the examiner agrees Lumpkin does not disclose dividing the data information channel. Lumpkin does disclose transferring data across the interface connection 204 from the source 200 to the modem 201 (column 5, lines 6-10). Lumpkin further discloses commands are transmitted from the source 200 to the modem 201

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(column 7, lines 54-56 and column 19, lines 29-31). Lumpkin also discloses transmitting data from the source 200 to the modem 201 (column 7, lines 49-51 and column 19, lines 34-38). This data is sent for subsequent transmission over a communication channel to the network. Lumpkin does not disclose the command information includes commands to call a telephone number or a command to answer an incoming call. Noyes discloses a modem transmits data or command information (column 6, lines 7-11). When transmitting command information, the modem responds to a set of "intelligent modem" commands, which includes commands to answer an incoming call, to dial an outgoing call or to terminate a phone line connection (column 6, lines 27-32). These commands are necessary to establish communication or to terminate communication with other terminals. It would have been obvious for one of ordinary skill in the art at the time of the invention to utilize the commands of Noyes to establish or terminate a connection between modems in the system disclosed by Lumpkin. The ability to detect an incoming call is a vital link in providing electronic mail and remote database accessing functions (column 1, lines 21-28). The combination would transmit the commands to answer an incoming call, to dial an outgoing call or to terminate a phone line connection over the command channel because that is the channel which commands are transmitted. In addition, these commands allow data transmission to the network to commence, which is the function of the commands of Lumpkin.

Finally, the limitation of dividing the data information channel into data information and command information is claimed in dependent claim 54. A rejection of claim 54 under 35 U.S.C. 103(a) as being unpatentable over Lumpkin et al (US

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5,943,505) in view of Noyes (US 4,656,318) further in view of Johnson et al (US 5,001,703) was made in the previous office actions and will be discussed under sub-heading B) of heading (10) response to arguments of the examiner's answer.

Claims 4, 20, 31 and 42- Appellants arguments for independent claims 4, 20, 31 and 42 appear to be identical to the arguments for claim 1. Therefore, the response to argument for claims 4, 20, 31 and 42 is the same as the response to argument of claim 1 stated above.

Claims 5-19, 21-30, 32-41 and 43-53- Appellants do not argue the individual limitations of dependent claims 5-19, 21-30, 32-41 and 43-53. Therefore, the response to argument for claims 5-19, 21-30, 32-41, 43-53 is the same as the response to argument of claim 1 stated above.

B. Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lumpkin et al (US 5,943,505) in view of Noyes (US 4,656,318) further in view of Johnson et al (US 5,001,703).

Claim 54- Appellant states on page 17 of the appeal brief "there is not teaching or suggestion by any of the cited references that command information may also be embedded in the data information, in addition to command information

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being provided through a separate logical channel.” The examiner disagrees. As stated in the previous office action, the combination of Lumpkin and Noyes discloses the communication method of communication command and data over separate logical channels. The combination of Lumpkin and Noyes does not disclose monitoring the data information for embedded command information and executing the embedded commands. However, Johnson discloses, in figure 5a, transmitting command information or control bits in the same logical channel as data information (column 4, line 61 to column 5, line). It would have been obvious for one of ordinary skill in the art at the time of the invention to utilize the command and data information in one logical channel as shown by Johnson in the method of the combination of Lumpkin and Noyes. Johnson shows the logical channel transmitting both command and data allows adaptive control of the communication since the commands can switch slot allocation according to channel capacity (column 5, lines 1-5). This will conserve spectrum and efficiency (abstract). For these reasons, the limitations of claim 54 are taught by the combination of Lumpkin, Noyes (US 4,656,318) and Johnson.

### **(11) Related Proceeding(s) Appendix**

It is assumed that the Appellants meant to include both the evidence and related proceedings appendixes with a statement of “NONE.”

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No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

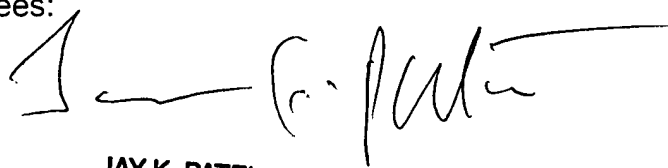


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